

Programme for the implementation of a Regional Fisheries Strategy for the
Eastern and Southern Africa and Indian Ocean Region

Programme pour la mise en oeuvre d'une stratégie de pêche pour la région



KENYA FISHERIES GOVERNANCE

August 2011



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**IRFS
KENYA FISHERIES GOVERNANCE**

August 2011

Kenya case study: Contribution to a comprehensive review of progress made to improve Governance of the marine fisheries sector in the ESA-IO region, and identification of priority areas for actions of regional significance that could be undertaken by the IRFS Program in relation to key principles of good governance.

Report Undertaken by:

David Japp

Capricorn Fisheries Monitoring cc

Cape Town

South Africa

dave@capfish.co.za

Prepared on behalf of:

AGROTEC CONSORTIUM

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ACRONYMS AND ABBREVIATIONS

AFIPEK	Association of Fish Processors and Exporters of Kenya
BMU	Beach Management Units
DWFN	Distant Water Fishing Nations
CDA	Coastal development Authority
EAf	Ecosystem Approach to Fisheries management
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
FIQAD	Fish Inspection, Quality Assurance & Marketing Directorate
FAO	Food and Agricultural Organisation of the United Nations
FiD	Fisheries Department of MoD
FMSU	Fisheries Monitoring and Surveillance Unit
FPA	Fisheries Partnership Agreements
FS	Fisheries Secretary
GDP	Gross Domestic Product
KMFRI	Kenya Marine and Fisheries Research Institute
KFS	Kenya Forestry Service
KEFRI	Kenya Forestry Research Institute
KPA	Kenya Ports Authority
KWS	Kenya Wildlife Services
GOK	Government of Kenya
LMMA	Locally Marine Managed Areas
MCD	Marine and Coastal Fisheries Directorate
MCS	Monitoring, Control and surveillance
MoD	Ministry of Fisheries Development
MPA	Marine Protected Area
NEMA	National Environment Management Authority
t	Metric Tonnes
VMS	Vessel Monitoring System
WIO	West Indian Ocean
WWF	World Wildlife Fund for Nature

EXECUTIVE SUMMARY

Fisheries governance in Kenya has historically been focused on the inland sector. Governance of the marine sector has and still is weak although the essential components of good governance are in place. Fisheries legislation is generally sound with the new bill aiming at strengthening Kenya's interests in the offshore sector – in particular the tuna and shrimp industrial sectors. Due to the high level of community involvement on the coast, interaction with the industrial fishing sectors, such as the shrimp fishery, is a major governance and fishery management challenge. Governance of Kenya's fisheries in the offshore sector is almost zero and limited to licensing fees with no culture of managing these licenses. This has effectively led to "non-performance" of Kenya due primarily to weak governance in this sector.

Within territorial waters a key governance structure has been the implementation of Beach Management Units – essentially a co-management approach. There is little evidence to demonstrate the effectiveness of BMUs although in principle the concept is good.

Gaps in the governance of Kenya marine fisheries include:

- A. Inadequate financial and technical resources (capacity). In particular training of Fisheries Managers is seriously lacking – this impacts effective governance of the resources managed.
- B. A key governance concern relates to overlapping and uncoordinated jurisdictions. Most of the institutions with a stake in coastal zone management fall under different ministerial or sectorial disciplines, such as water, agriculture, transportation, regional development, local government, energy and others. This multiplicity, in the absence of adequate coordination mechanisms, makes it difficult to give focused attention to the coastal and marine environment. The fact that there is no single ministry or agency with dedicated or core competency to deal with coastal and marine issues is problematic for effective governance.
- C. There is a need to synergise the coastal zone and marine (fisheries) legislation as well as implementation of this legislation. Training and recruitment of personnel, acquisition of equipment and facilities, and more budgetary and other resources are required, if the implementation of the governance regime is to be effective.
- D. Marine protected areas can have an important transboundary function with benefit to the regional governance of fisheries and stock sustainability.
- E. Participation of Kenya in fisheries at an International level is weak -there is a need to develop a comprehensive, modern legal and regulatory framework for fisheries management. The status and progress of national laws is not reflected in the international legal and institutional arrangements. Consequently, conflict in law enforcement and the duplication of tasks in fisheries management arise.

Recommendations

1) Integration of the national and regional Initiatives on fisheries governance

The fisheries governance initiatives in the current internationally-funded programmes (KCDP / SWIOFP / SmartFish) need to be synergise to optimise the benefits to Kenya. Any new activities that are developed that relate to fisheries governance either in the region or at a national (Kenya) level should be integrated into the activities of these programmes.

2) Development of Fishery Management Capacity

Nearly all key components of the Fishery Management Framework are lacking in Kenya. Capacity development in this area is vital for long-term effective governance of fisheries in Kenyan waters. This should include addressing the communication gap between fisheries research and fishery managers. Ideally research components, such as stock assessment should be practically linked to the development of fishery management plans and operational management procedures for the different fisheries and stocks.

The outputs of the training and capacity development should therefore not be pure science but should focus on fisheries management. This capacity should focus on fisheries with the greatest need which are the offshore tuna fisheries and developing an understanding of the artisanal fisheries impacts on stocks they exploit, in particular the seasonal migrating large pelagic species.

3) Harmonisation and Review of Fisheries legislation

Although the current new fisheries bill is a step up from the old Act and attempts to focus more on offshore fisheries, there are conflicts with other legislation (such as the management of MPAs and Marine Managed Areas). This should include the integration / effectiveness of the Act with respect to regional management and transboundary issues.

4) Transboundary and EEZ management

There is an urgent need for the coastal states (and many of the Indian Ocean Island states) to raise their profiles in the RFMOs (in particular IOTC). The management framework for offshore fisheries at the National level (in Kenya and possibly other states in the region) does not support the development of a national offshore fishery for tunas. The governance and legislative framework should be streamlined and costs (taxes) reduced to facilitate the economics of the tuna sector. This will also encourage Distant Water Fishing Nations to utilise land-based facilities. This could be facilitated by the development of a common fisheries policy for the WIO region coastal and island states.

RÉSUMÉ ANALYTIQUE

La gouvernance des pêches au Kenya a toujours été axée sur le secteur intérieur. La gouvernance du secteur maritime a été et est toujours faible même si les éléments essentiels de la bonne gouvernance sont en place. La législation sur la pêche est généralement en accord avec le nouveau projet de loi visant à renforcer les intérêts du Kenya dans le secteur offshore - en particulier les secteurs industriels du thon et des crevettes. En raison du niveau élevé de l'engagement communautaire sur la côte, l'interaction avec les secteurs de la pêche industrielle, comme la pêche crevettière, est un défi majeur pour la gouvernance et la gestion des pêches. La gouvernance des pêches du Kenya dans le secteur offshore est quasiment nulle et est limitée aux frais de licence sans avoir une culture de la gestion de ces licences. Cela a effectivement mené à un «non-performance» du Kenya due principalement à la mauvaise gouvernance dans ce secteur.

Une structure clé de la gouvernance a été mise en œuvre par des unités de gestion des plages (BMU) dans les eaux territoriales - essentiellement une approche de cogestion. Il y a peu d'éléments pour démontrer l'efficacité des BMU même si en principe le concept est bon.

Les lacunes dans la gouvernance des pêches maritimes du Kenya sont:

- A. L'insuffisance des ressources financières et techniques (la capacité). En particulier la formation des gestionnaires des pêches est très insuffisante - cela a un impact sur l'efficacité de la gouvernance des ressources gérées.
- B. Un problème clé de la gouvernance est lié aux chevauchements et un manque de coordination des juridictions. La plupart des institutions ayant un intérêt dans la gestion des zones côtières sont sous la direction des différentes disciplines ministérielles ou sectorielles, telles que l'eau, l'agriculture, le transport, le développement régional, le gouvernement local, l'énergie et autres. Cette multiplicité, en l'absence des mécanismes de coordination adéquats, rend difficile d'accorder une attention ciblée à l'environnement côtier et marin. Le fait qu'il n'y a pas un seul ministère ou un organisme ayant des compétences de base ou spécialisé pour aborder les questions marines et côtières est problématique pour une gouvernance efficace.
- C. Il est nécessaire de mettre en synergie la législation de la zone côtière et marine (pêche) ainsi que la mise en œuvre de cette législation. La formation et le recrutement du personnel, l'acquisition des équipements et des installations ainsi que des ressources budgétaires supplémentaires sont nécessaires, pour que la mise en œuvre du régime de gouvernance soit efficace.
- D. Les aires marines protégées peuvent avoir une importante fonction transfrontalière avec un avantage conféré à la gouvernance régionale de la pêche et à la durabilité des stocks.
- E. La participation du Kenya dans la pêche est faible au niveau international - il est nécessaire de développer un cadre global, juridique et réglementaire moderne pour la gestion des pêches. L'état et les progrès de la législation nationale ne se reflètent pas dans les dispositions juridiques internationales et institutionnelles. Par conséquent, le conflit dans l'application de la loi et la duplication des tâches dans la gestion des pêches surgissent.

Recommandations

1) Intégration des initiatives nationales et régionales sur la gouvernance des pêches

Les initiatives liées à la gouvernance des pêches dans les programmes actuels financés à l'échelle internationale (KCDP / SWIOFP / SmartFish) doivent être en synergie afin d'optimiser les avantages pour le Kenya. Toute nouvelle activité développée se rapportant à la gouvernance des pêches au niveau régional ou national (Kenya) devrait être intégrée dans les activités de ces programmes.

2) Développement de la capacité de gestion des pêches

Presque toutes les composantes clés du Cadre de gestion de la pêche font défaut au Kenya. Le développement des capacités dans ce domaine est vital pour une gouvernance des pêches qui soit efficace à long terme dans les eaux du Kenya. Ceci inclut de combler le manque de communication entre la recherche halieutique et les gestionnaires des pêches. Idéalement, des éléments de la recherche, comme l'évaluation des stocks, devraient être liés dans la pratique à l'élaboration des plans d'aménagement des pêcheries et des procédures de gestion opérationnelle pour les différents stocks et pêcheries.

Les résultats de la formation et du développement des capacités ne devraient donc pas être de la science brute, mais plutôt se concentrer sur la gestion des pêches. Cette capacité devrait se concentrer sur les pêcheries ayant les plus grands besoins, comme la pêche thonière en haute mer, et permettre une compréhension des impacts de la pêche artisanale sur les stocks qu'elle exploite, en particulier sur les espèces de grands pélagiques migrateurs saisonniers.

3) L'harmonisation et la révision de la législation des pêches

Bien que le récent projet de loi sur la pêche soit une avancée par rapport à l'ancienne loi et essaie de se concentrer davantage sur la pêche hauturière, il existe des conflits avec d'autres législations (comme la gestion des AMP et des Zones de Gestion Marine). Cela devrait comprendre l'intégration / l'efficacité de la loi par rapport à la gestion régionale et aux problèmes transfrontaliers.

4) La gestion transfrontalière et de la ZEE

Il y a un besoin urgent pour les Etats côtiers (et pour bon nombre des Etats insulaires de l'océan Indien) d'accroître leur visibilité au sein des ORGP (en particulier de la CTOI). Le cadre de gestion de la pêche hauturière au niveau national (au Kenya et éventuellement dans d'autres Etats de la région) ne prend pas en charge le développement d'une pêche thonière hauturière nationale. Le cadre législatif et de gouvernance devrait être rationalisé et les coûts (taxes) réduits pour faciliter l'économie du secteur thonier. Cela permettra également d'encourager les nations de pêche lointaine à utiliser des installations terrestres. Cela pourrait être facilité par le développement d'une politique commune de la pêche pour les Etats côtiers et insulaires de la région de l'océan Indien Occidental.

1. OBJECTIVES

This fisheries governance review was commissioned through the Agrotec consortium as part of a broad study aimed at implementing a regional fisheries strategy for the Eastern-Southern Africa and Indian Ocean (ESA-IO) Region (the IRFS Program). Although this review concerns only Kenya, fisheries governance in the global and legal context is incorporated in the study. This review makes recommendations relating to governance of marine fisheries in Kenyan specifically with respect to fisheries management. In the Kenyan context both the management of migratory transboundary stocks in the high seas as well as fish resources within the territorial waters are considered.

The author stresses that the intention is to report on both fact and the opinion of those interviewed. In some cases it is subject to the authors own interpretation. It is intended as an example of fisheries governance in the region, thereby stimulating useful discussion that can help assist the goals of the IRFS program to develop a strategy for the management of fisheries in the EAS-IO region.

2. METHODOLOGY

2.1. Mission Strategy

The consultant travelled from Cape Town (home base) to Mauritius for a project briefing. Thereafter the Consultant travelled directly to Mombasa in Kenya for a series of meetings and interviews. These included:

- Kenya Fisheries Department (Marine Branch) (FiD)
- Kenya Marine and Fisheries Research Institute (KMFRI)
- South West Indian Ocean Fisheries Project (SWIOFP)
- Kenya Coastal Development Project (KCDP)
- Kenya Wild Life Services (KWS)

The consultant then travelled to Nairobi, Kenya for a series of meetings and interviews with the following institutions:

- Ministry of Fisheries (Meetings with directors of Marine Fisheries and Aquaculture)
- World Wildlife Fund for Nature (WWF)
- African Union (Fisheries Consultant)
- Kenya Fish Processors Association (AFIPEK)
- Transparentsea (Dr Standing)

Several meetings were cancelled due to unavailability of persons or schedule clashes. This included a meeting with the project leader for ReCoMaP. The Consultant returned to home base after 10 days of travel and consultations and prepared a draft report for review. Final version was submitted in December 2011 and January 2012 after follow-up reviews.

2.2. Comments on the Terms of Reference

The Terms of Reference were clear and fulfilled by the consultant. Where interviews could not be undertaken the consultant communicated directly with individuals via e-mail and telephonically. The Consultant has also worked extensively in Kenya and the Region on fisheries issues and used this experience as a baseline for the governance evaluation.

2.3. Report Structure

The framework for this report was provided by the Terms of Reference given in Annexure 1. It has been based on three primary sources of information:

- a) Direct interviews with interested and affected parties. Questions to individuals were both specific and broad. The intention was to facilitate discussion and opinion on fisheries governance in Kenya (and in a regional / global context). Those interviewed were guaranteed confidentiality and that no direct quotes from the discussion(s) would not be used - all interviews would be consolidated;
- b) Collation of available material and literature sourced through the internet and directly from individuals, institutions and past and present programmes and projects in Kenya and the region e.g. ReCoMaP, South West Indian Ocean Fishery Project (SWIOFP), Kenya Coastal Development Project (KCDP);
- c) Individual interpretation of the author based on direct experience in Kenya fisheries and project development between 2003-2011.

Persons interviewed, institutions visited and general questions asked are provided in Annexure 2 & 3.

2.4. Definition of Fisheries Governance Applied

The FAO definition of modern fishery governance is “a systemic concept relating to the exercise of economic, political and administrative authority” (FAO, 2001). It is characterized by:

- guiding principles and goals, both conceptual and operational;
- the ways and means of organization and coordination;
- the infrastructure of socio-political, economic and legal institutions and instruments;
- the nature and modus operandi of the processes;
- the actors and their roles;
- the policies, plans and measures that are produced; as well as
- the outcomes of the exercise.

Fisheries governance is therefore a consolidation of the legal, social, economic and political arrangements used to manage fisheries. Underpinning fisheries governance are policies and regulatory frameworks that integrate with government and civil society and all stakeholders. Further, institutional frameworks and capacity to carry out good fisheries management are essential for fisheries governance. In developing countries (of which Kenya is typical), many management authorities face severe constraints in their ability to fulfil their responsibilities and adapt to the changing governance environment. These include:

- Lack of financial resources due to limited government budgets. This may be confounded by lack of recognition of the importance of the fisheries sector, and therefore adequate funds not being allocated from national budgets;
- Lack of human resources, in terms of numbers and also in terms of appropriate training and education. This is compounded by the complex and dynamic nature of fisheries and difficulties of data collection.

3. ANALYSIS OF GOVERNANCE OF MARINE FISHERIES IN KENYA

3.1 Kenya in the Global and Regional Marine Fisheries Context

Fisheries Governance in Kenya is considered in this report in the context of both national and regional fisheries. Note also that Kenya is a coastal state - this has relevance to fisheries governance if compared to the numerous island states in the IOC region. Kenya's economic fishing zone (EEZ) extends 200 nautical mile and abuts the EEZs of Tanzania and Somalia (Figure 1). Fishing effort in Kenyan waters is however primarily directed inside territorial waters (12 nm) and is in fact almost entirely restricted to the fringing reef and near-shore areas. With few exceptions, high-seas fishing effort is conducted only by foreign licensed large pelagic vessels under license to Kenya¹ and within the IOC region. Kenya is however a full member of the Indian Ocean Tuna Commission (IOTC) as well as South West Indian Ocean Fisheries Commission (SWIOFC).



Figure 1. Relative position of Kenya coast in the IOC region (after EU/COI-ReCoMaP)

3.2 Kenya Fisheries

Kenya has a relatively small coastline (Figure 1) with a narrow continental shelf. Fisheries are however a major activity in the country, although the marine sector is overshadowed by the freshwater sector – primarily the fishery on Lake Victoria targeting Nile perch. Surprisingly, marine fisheries are insignificant relative to the freshwater fisheries – off some 145 000 t reported in 2005 (Ministry of Fisheries Development web site), only about 5%, or 6 823 t was reported as “marine”. Whereas the marine fishery is largely “artisanal”, the fresh water sector is both “industrial” and artisanal. Landings are dominated by the Lake Victoria region (133 526 t in 2005) – in recent years catch volumes from Lake Victoria have however declined underpinning the need to better manage and increase utilisation of the marine sector. Fisheries are however recognised for their strategic value. In the 2008 -2012 (dated January 2011) “Fisheries Strategic Plan”, it is stated that “Fisheries are an important source of livelihood to fishing communities in the country. They also contribute to food security and provide raw materials for production of animal feeds as well as fish oil and bioactive molecules for the pharmaceutical industry. Fisheries support auxiliary industries such as net making, packaging material industries, boat building and repair, transport, sports and recreation”. The strategic plan further states that some 80,000 people are directly involved in fishing and about 800,000 indirectly involved. The fisheries sub-sector contributes about 0.5% to national GDP (Economic Survey 2008). Interestingly, the strategy also states that the “marine fishery potential is estimated at 150,000 t of commercial tuna and other species against actual landings of about 7,000 t annually” and that the potential this resource can provide through Fisheries Partnership Agreements (FPA) will require foreign vessels to land a proportion of the harvest in Kenya for processing thus creating employment opportunities at the coast.

3.2.1 Marine Fisheries Resources

The Kenyan marine zone approximates only 420 km in length with a total area of the Kenyan EEZ of about 230,000 km². There are two main river systems, the Sabaki, just north of Malindi and the Tana about 80 km further north (Figure 2). It is only in these areas that industrial (shrimp) fisheries have been active in the past. Much of the Kenyan

¹ High seas landings are poorly reported and most likely grossly underestimated. Licensed operators report landings to the Indian Ocean Tuna Commission (IOTC)

coastline is fringed by mangrove forest and swamp. Kenya's known marine inshore fishing grounds include the rich inshore grounds around Lamu Archipelago, Ungwana Bay, North Kenya Bank and Malindi Bank (Figure 2). The "inshore" fisheries zone is however an important part of the whole Kenya coastal fishery. The zone is exploited predominantly by artisanal fishermen who operate some 4,800 mostly un-motorized boats (ref frame survey 2008) to produce around 6,000 – 7,000 t of fish annually, valued at over KShs 500 million (this figure quoted on MoD web site). Historically annual catches fluctuated between 4,000 and 10,000 t over more than a 20-year period.

The prawn fishery, from which approximately 400 t was landed each year, was fished by commercial trawlers from the two fishing grounds given above. This fishery however was closed in 2004 primarily due to problems between industrial and artisanal users². Large pelagic species that include many of the migratory tunas and bill fishes are caught by both the artisanal and deep sea fleets. The catch of the artisanal component is however small and probably under-reported as fishing occurs around the entire coast and in near-shore waters and is therefore difficult to assess. Historically Kenya has also licensed vessels from Distant Water Fishing Nations (DWFNs), including purse seine and longline vessels. In 2008 it was understood that some 28 purse seiners and nine longliners were licensed for a total license fee approximating US\$628 000.

3.2.2 Inland fisheries

Although this review does not include inland waters, they do have relevance in a broader context as the scale of the freshwater fisheries strongly influences the overall governance of fisheries. Inland waters cover an area of between 10 500 and 11 500 km² and account for about 96% of national fish production. The introduction of Beach Management Units (BMUs) was for example first established on Lake Victoria and has only in recent years been implemented at the coast in the marine sector. Currently total fresh water fish production approximates 120-130000 t pa.

3.2.3 Aquaculture

Interest in aquaculture is growing in Kenya, especially with the declining production in the freshwater sector. Aquaculture contributes about 1% of the total national fish production (Shipton and Hecht, 2007). Currently the total area under aquaculture stands at 722.4ha which includes dam aquaculture. The production from this utilized area stands at an average of 4,300,000 kgs per year³. Tilapia and African catfish dominate aquaculture and are mostly cultivated under intensive earthen pond (closed) systems. Mariculture remains under-developed, although there are research initiatives to promote seaweed culture, milkfish, and shrimp. Crab (*Scylla serrata*) fattening is a common community activity along the coast in mangrove areas. In anticipation of the proposed new government structures a directorate of Aquaculture is now in place.

² Industrial fishery has been reopened in 2011 operating under a management plan and strict spatial limitations to minimize interactions with community fishers.

³ This figure is assumed to be outdated

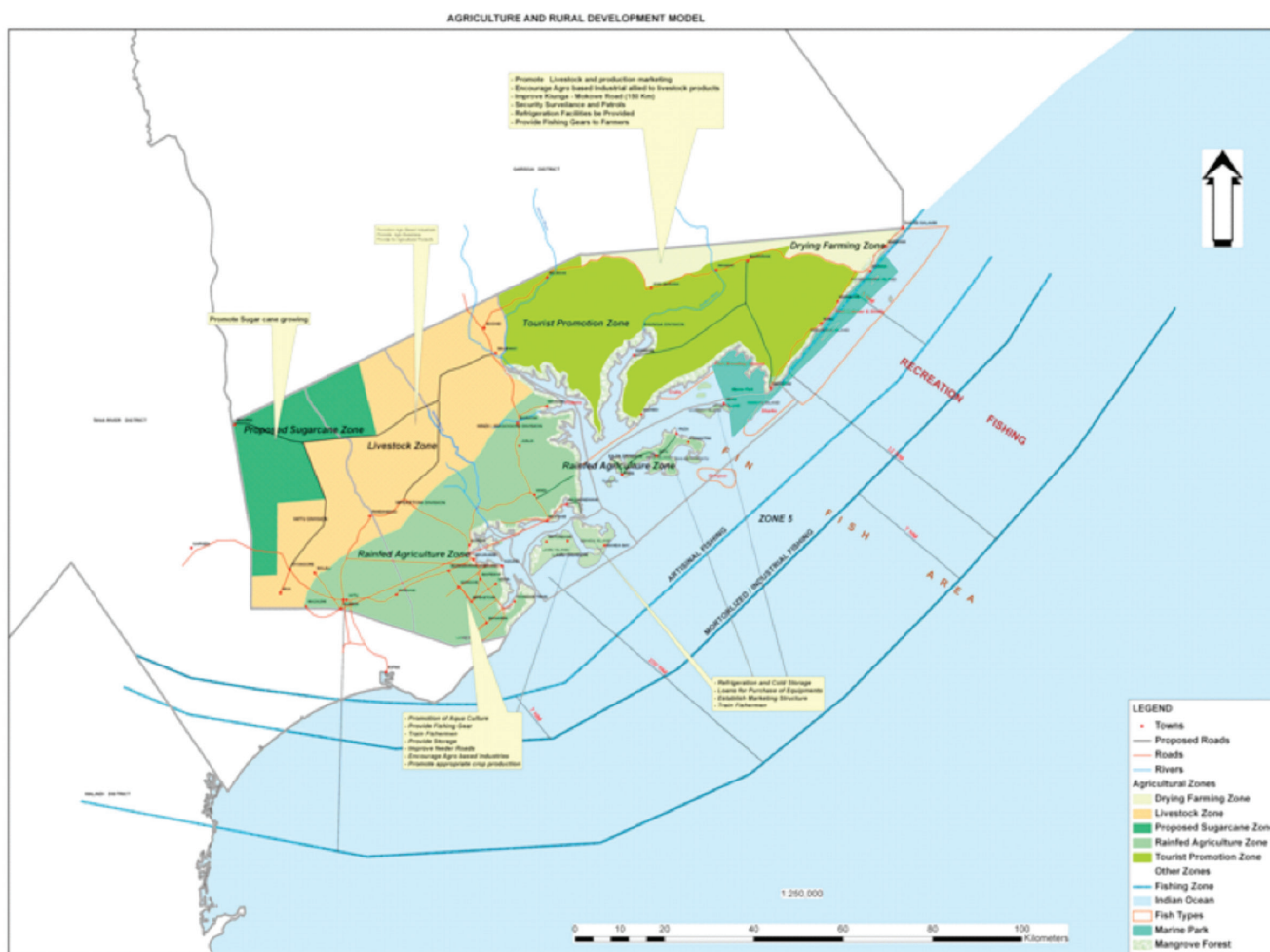


Figure 2. Map of the primary fishing areas in northern Kenya – the Lamu district has established fisheries for lobster, shark, octopus and many others. It also abuts the main shrimp industrial trawling areas as well as being integrated into the Kiunga Marine Protected Area (MPA). [Figure provided by Kenya Wildlife Services]

4. STATUS OF FISHERIES MANAGEMENT AND INSTITUTIONAL ARRANGEMENTS

4.1 Legal Instruments

A comprehensive review of the State of the Coast was undertaken by ReCoMaP in 2009 (ReCoMaP, 2009). This included a thorough review of the legal instruments and institutions responsible either directly or indirectly for fisheries governance in Kenya (this review draws on information from this report). The following are the key legal instruments underpinning governance of fisheries in Kenya:

- i) The Fisheries Act of 1991 (Revised) – Chapter 378
- ii) The Wildlife (Conservation and Management) Act of 2002 (revised)
- iii) Kenya Forests Act, 2005
- iv) The Maritime Zones Act
- v) Environmental Management Act of 1999
- vi) Local Authority and Planning Act
- vii) Water Act

- viii) Maritime Authority Act
- ix) Kenya Ports Authority Act

Until 1999, the rules and regulations governing Kenya's coastal and marine environment were scattered in numerous sector-based statutes. The institutions mandated to deal with the sector had overlapping roles, and many had limited competencies. However, in 1999 Kenya enacted the Environmental Management and Co-ordination Act (No. 8 of 1999), which came into effect on 14 January 2000. The Act makes direct reference to the coastal and marine environment (s.55) and inland waters and wetlands (s.42). The Act established key environmental institutions, including the National Environment Management Authority (NEMA).

The Coast Development Authority Act (Cap 449) provides for the establishment of an Authority to plan and coordinate the implementation of development projects in Coast province and the EEZ and for connected purposes. With respect to fisheries, the Fisheries Act vests authority in the Director of Fisheries and accords a minimal role to communities. The limited reference made to fisher folk in the Act relates especially to regulations associated with harvesting and trading fish, with no mention for the role of the fisher folk in resource management. However, some informal arrangements carried over from past traditional practices, although weakened over time, still persist and are promoted by the Fisheries Department. For example, community leaders have in many instances retained traditional authority over the use of landing sites by fishermen (see BMUs).

The institutional arrangements for the ports sector are defined in the Kenya Ports Authority (KPA) Act. There is minimal, if any, non-State intervention in the administration or regulation of the ports sector. The Ministry of Transport and Communications exercises general oversight of the KPA. However, the Kenya Maritime Authority (KMA) has been established to monitor, regulate and coordinate activities in the maritime industry. In this regard, KMA handles the administration and enforcement of the Merchant Shipping Act and other legislation relating to the maritime sector. KPA and KMA play a critical role in the potential development of a Kenyan offshore tuna sector (see the Strategic Plan for fisheries 2008 to 2012).

Note however that an important transition is taking place in government – that is a devolution in the governance structures from “Provinces” (with districts and regions managed under each province), to “Counties”⁴. For marine fisheries this is likely to have major implications for the governance of the marine sector. Further, this new county system of fisheries governance and management has been incorporated in several new Bills that at the time of writing (August 2011) are in process of review by Kenya's parliament. The two most relevant Bills are:

- The fisheries management Bill, 2011 that provides for the conservation, management and development of fisheries and other aquatic resources; to establish the Kenya Fisheries and Services; and for connected purposes; and
- The Wildlife (Conservation and Management) (amendment) Bill 2010 minor amendments to the Wildlife (Conservation and Management) Act.

Kenya also has international and regional commitments to fisheries instruments. They are a full member of the regional fisheries management organisations, IOTC and SWIOFC and have also seceded to the United Nations Convention of the Law of the Sea (UNCLOS - check) and the United Nations Fish Stocks Agreement (UNFSG).

⁴ Six coastal counties from north to south are : Lamu, Tana River, Kilifi, Mombasa and Kwale

Kenya is however not a member of the Southern African Development Community (SADC) and has therefore not signed the SADC protocol on fisheries. Kenya is a full member of the African Union (AU).

Considering the primary fishery governance instrument, the Fishery Act, there is a comprehensive suite of regulations governing the marine and freshwater sectors. Importantly however, the current Act seems to fulfil most of the essential requirements for the marine sector. The new bill makes better provision for the expansion and regulation of fisheries beyond territorial waters. Critically however, the Act and regulations also allows for by-laws that can be motivated for and implemented independently on a case by case basis and enforced at the district level. In particular, and this is a key governance structure, Beach Management Units or BMUs can be declared (refer to 6.2).

4.2 Institutional Arrangements for Fisheries (with extracts from SOC, 2009)

The following key institutions relate to fisheries governance structures in Kenya:

- Ministry of Fisheries Development (MoD)
- Department of Fisheries (FiD) – a department under MoD
- Kenya Marine and Fisheries Research Institute (KMFRI)
- Kenya Wildlife Services (KWS)
- Coastal Development Authority (CDA)
- National Environment Management Authority (NEMA)
- Kenya Forestry Service
- Kenya Forestry Research Institute (KEFRI)

With respect to fisheries governance this review focuses on the Ministry of Fisheries Development, their department (FiD) and the marine research arm (KMFRI). The role of KWS in fisheries governance is also discussed. The relationship of the other institutions is relatively minor; suffice to say that they do have governance roles in fisheries occasionally such as through management of mangroves (KFS and KEFRI), community development and public private partnerships (CDA) and through NEMA for Environmental Impact Assessments (EIAs) related to fisheries.

The para-statal, KMFRI is also a State Corporation that was established by an Act of Parliament (Science and Technology Act, Cap 250 of the Laws of Kenya) in 1979 and run by a Board of Management. The research mandate of KMFRI is defined by article No. 4 of the Science and Technology Act of 1979, Cap 250. The Institute is empowered to carry out research in Marine and Freshwater fisheries, Aquatic biology, Aquaculture, Environmental Chemistry, Ecological, Geological and Hydrological studies, as well as Chemical and Physical Oceanography.

4.3 Ministry of Fisheries Development: Strategic Plan 2008 - 2012

The strategic plan for fisheries as outlined is detailed and contains many elements relating to governance. The extent to which this plan has been implemented however is the main question. Nevertheless the plan is highlighted here as it contains elements relating to both governance and fisheries management that suggest Kenya is relatively advanced in identifying its needs in this regard.

Key elements identified in this plan relating to governance are:

- MoD plans to be a leading institution in management, research and development of the fisheries resources in the region.
- Challenges identified, amongst others include climate change, declining fish stocks, limited domestic capacity for deep sea fishing and inadequate marketing infrastructure.
- A new organization structure that is expected to adequately address the Ministry's functions is proposed. This will include a Fishery Secretary and four Fisheries Directorates namely:
 - Marine and Coast Fisheries;
 - Inland and Riverine Fisheries;
 - Aquaculture Development; and
 - Fish Inspection, Quality Assurance and Marketing.
- Fisheries Management: the current open-access fishing regime is currently causing uncontrollable fishing effort, leading to overexploitation of the capture fishery resources. BMUs are advocated as one of the methods of regulating and managing exploitation of these resources as it regulates entry to the fishing industry.
- Weak Institutional, Policy and Legal Framework for Fisheries Development is identified as a key a key strategic area to address. This includes a) Institutional Reforms b) Policy Reforms and c) Legal Reforms.

The second identified strategic Issue relates to the unsustainable utilization of capture fisheries resources in which the strategic inputs are:

- Promoting co-management of fisheries resources
- Controlling fishing effort
- Resolving resource conflicts in trans-boundary fisheries
- Strengthening enforcement of fisheries legislations
- Adoption of Ecosystem Approach to Fisheries (EAF) Management
- Enhance fish stocks in natural water systems
- Promoting utilization of fisheries resources in the EEZ and Lake Turkana
- Inadequate Infrastructure and Human Resources Capacity

4.4 Kenya Wildlife Services and Marine Protected Areas

The management of marine parks is an activity (and a governance issue) designated to KWS who develop and enforce the MPAs through the Wildlife Conservation and Management Act

Kenya has nine MPAs of which Figure 2 is one example. The location of these MPAs, in particular those located on or near transboundary areas are the highest profile. The Wildlife Act allows for some extractive activities, however in many interviews, governance of MPAs and conflict between the two main pieces of legislation is clearly problematic. Responsibility relating to extractive issues and associated legislation is designated to Fisheries, but MPA management, and enforcement of the Wildlife Act is a KWS responsibility.

In most cases, MPAs have abutting buffer areas, or LMMAs that permit extraction. In some instances, communities seem to want to enforce control over their own areas bringing into question the roles of the legislation – Fisheries Act, Marine Parks, BMUs and LMMA functions. Harmonisation of the policy and legislation is clearly a governance issue that needs to be addressed.

5. NATIONAL CAPACITY IN PROVIDING KEY FISHERIES MANAGEMENT SERVICES

The key fishery management units in Kenya fall under the Ministry of Fisheries Development (MoD). Four directorates are based in Nairobi with the operation based at the coast in Mombasa. Each district has a district office with a District Fisheries Officer. The four directorates based in Nairobi are: Freshwater Fisheries, Marine Fisheries, aquaculture and FIQA (Fisheries Inspection and Quality Control). This structure is likely to remain once the County system is implemented. There will be six counties – Lamu (northern most bordering Somalia), Tana Delta, Malindi, Kilifi, Mombasa and Kwale (southern-most bordering Tanzania). No clear indication was given in the interviews as to the total fisheries capacity with respect to numbers employed. What is clear however is that fisheries management capacity is limited and will be even more limited when the county system is introduced. Furthermore, the enforcement capacity is also severely limited; in particular MCS capacity in the offshore is low.

5.1 Ministry of Fisheries Development and the Marine and Coastal Fisheries Directorate

The Department of fisheries is a technical department of the ministry whose mandate is to provide for the exploration, exploitation, utilization, management, development and conservation of fisheries resources, and undertake research in marine and fresh water fisheries. Their stated mission (MoD Website) is “To facilitate sustainable management and development of fishery resources and products for socio- economic development so as to maximize the contribution of fisheries to the achievement of national development objectives especially poverty reduction, food security, creation of employment and rural incomes”.

Included in the service charter of MoD are the following core activities:

- Fisheries policy formulation and review;
- Fisheries licensing ;
- Management and development of marine fisheries including the Exclusive Economic Zone;
- Management and development of fresh water fisheries;
- Commercialization including formation of fisheries groups for local fishermen;
- Promotion of fish quality assurance, value addition and marketing;
- Development of aquaculture;
- Marine and Fisheries Research;
- Promotion of recreational fisheries.

Other non-core functions include:

- Facilitation of ice production and cold storage at landing sites;
- Promotion of credit facilitation to fishery sub-sector in liaison with financial Institution;
- Promotion of affordable and safe fishing boats and appropriate gears;
- Promotion of appropriate fishing technology.

From a governance perspective the following is critical:

- Fisheries governance is entrenched at the MoD in Nairobi (the highest authority);
- Presently the Marine directorate (MCD) headquarters are in Mombasa – the Director reports to Nairobi and has little autonomy;
- District fisheries officers (DCOs) at the coast report to MCD;

- BMUs appear to be primarily a “district” function with DCO instrumental in helping coordinate BMU activities and reporting;
- KMFRI remains semi-autonomous and is contracted through MoD, MCD or other independent groups (such as NGOs) to undertake fisheries research. KMFRI appears to have no direct responsibility for fisheries other than in a research and advisory capacity;
- The shift from a provincial to a county system will undoubtedly have a considerable impact on the governance structures, in particular the devolution of authority (and governance) and the need to enhance capacity to undertake the fundamental fisheries management activities;
- In the new county structure, offshore fisheries will remain a responsibility of MoD (Nairobi)⁵ and Counties will be responsible for fisheries in territorial waters.

5.2 The Beach Management Units (BMUs) and Locally Marine Managed Areas (LMMA) (extracts and definitions from MoD website and other materials).

Co-management in Kenya is a concept that was started with the purpose of shifting management from government institutions to a decentralised style in which stakeholders/resource users are involved in decision making. It is considered an “ecosystem approach to fisheries management” that aims to integrate into the overall fisheries management structures, both the “ecosystem” and “human” aspects – it is believed to “offer a viable option for achieving sustainable fisheries utilization”. The BMU regulation is an important governance instrument as it is a bottom-up approach embracing communities and all stakeholders who effectively become the stewards of the resources they exploit and are, therefore, involved in the decision making, implementation, and monitoring processes. BMUs also provide a framework for managing fisheries that often are of a transboundary or shared nature (only in the coastal zone though).

BMUs are therefore a critical governance tool – application however has limitations as they can only be implemented on the coast (and inland waters) and conceptually are difficult to apply to fisheries beyond territorial waters.

BMU responsibilities include:

- Law enforcement [registration of boats, enforcement of gear regulations and protection of fishing grounds];
- Beach Development [fish bandas and sanitation];
- Collection of fisheries data;
- Conflict Resolution and welfare matters;
- Handling emergencies.

The BMU concept falls within a broader concept of Locally Marine Managed Areas (LMMAs). This is an aspect highlighted by the ReCoMaP State of Coast Report (2009). Typically, the process of implementing an LMMA involves the participation of non-governmental organisations, as well as FiD. In Kenya, a typical scenario is to have a degree of division of labour, with government performing the overall institutional management role, a local NGO supporting local implementation, with a third NGO providing ecological planning and monitoring

⁵ This is not entirely clear as authority may be given in part to Mombasa as it is presently structured.

support (ReCoMaP, 2009 refers). However, these initiatives are not without their problems and challenges, and the Fisheries Department is keen that they are developed in a coherent and systematic way.

5.3 Fishery Management Plans

There are fishery management plans under development although none, with the exception of the industrial plan for the shrimp trawl sector, have been implemented. Management plans viewed by the author included:

- Lobster Fisheries Management plan for Lamu District Lobster
- Fisheries Management plan for Ungwana Bay prawn trawl fishery
- Management plan for the ring-net fishery
- Status Report of the Marine Aquarium Fishery as at September 2009 (not a plan)
- Kenyan sea cucumber fishery assessment (not a plan)

Each of the above is all “in process” – only the shrimp trawl plan has been approved and is in process of implementation. From a governance perspective, the need for consolidated fishery management plans for the whole marine sector in Kenya is critical. These plans should guide all aspects of the fisheries exploited including reference points and indicators, decision control rules and operational management procedures (including stock assessment) (see fisheries framework, Figure 3 after FAO, 2006). Currently these aspects are lacking in the prepared plans.

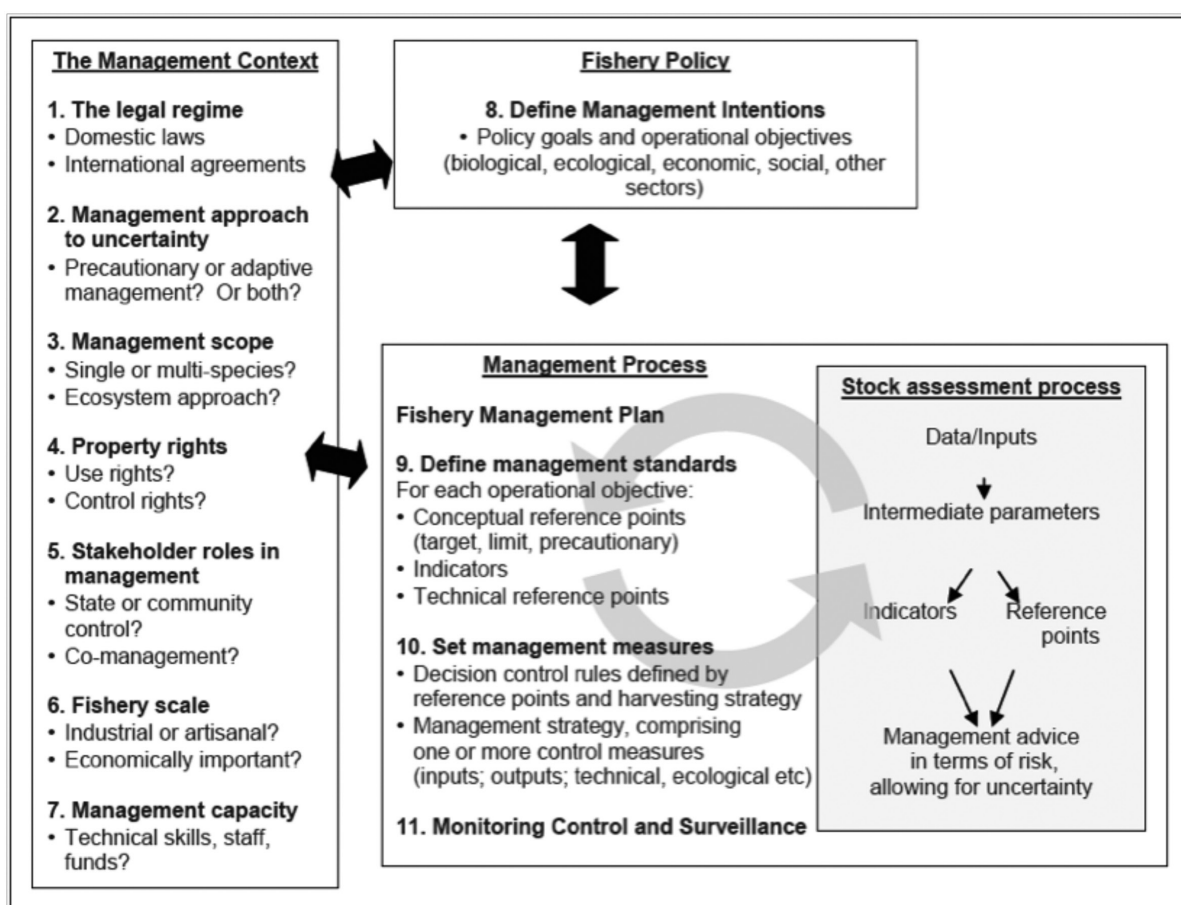


Figure 3. Generic Fishery Management structure (FAO, 2006)

6. REVIEW OF PERCEPTION BY STAKEHOLDERS

The views and opinions expressed by all interviews are given in Table 1. Note that this is the authors summary and does not necessarily represent all of the views – individuals may have different viewpoints on some aspects. Some of the main governance issues expressed are listed below.

Capacity and Institutional issues:

- a) Inadequate capacity of institutions to deliver on fisheries management services including research, policy, legal requirements, monitoring control and surveillance and financial support were a common theme in all responses.
- b) There are gaps in areas of responsibility between KFS, MoD, KWS and NEMA.
- c) Land conflict is a big governance concern – fishers are losing access to landing sites.
- d) In fisheries there is a clear lack in planning between research and management – this results in generally poor project outcomes that has a significant impact on the overall governance of fisheries.
- e) Fishery management plans are being developed for shrimp, ringnet, and lobster – not yet fully implemented. Operationalisation of these plans is a big problem.
- f) There is a need for a common fisheries policy in the region. Also standard fisheries agreements needed with EU and other countries so that there is no conflict between states licensing vessels in the region.
- g) There is a disjunction between research and management as well as a major need to train in fisheries management skills.

Transboundary and EEZ

- h) Management of the EEZ on a National level is inadequate and not transparent. Vessel licensing and payment of license fees were a frequently mentioned problem.
- i) The government needs to be more pro-active with respect to the regional management of Kenya's offshore resources.
- j) GOK imposes unnecessarily harsh conditions to the establishment of an environment that promotes the development of the offshore fisheries sector. Piracy is also a massive issue that is severely constraining the offshore tuna industry.
- k) The GOK is not taking adequate initiative to support the development of offshore fisheries.

- l) Governance with respect to developing ports for fisheries is poor, initiatives are in pace but progress is negligible.
- m) Transboundary issue – fisher migration and exploitation of common resources e.g. To Tanzania / Pemba fishers and Somalia migrating between countries seasonally.
- n) Regional management of the Offshore sector is vital (synergise with neighbours).

Legal Framework

- o) Conflicting legal frameworks – in particular between the Fisheries Act and the Wildlife Conservation and Management Bill.
- p) The pending implementation of new bills will have a major impact on governance – there is great uncertainty how the new Acts will be implemented (at the county level). Further the new governance regime is likely to require considerable more human capacity, additional infrastructure and staff movements.
- q) Kenya fisheries laws are “good” but enforcement and prosecution is not adequate.
- r) Revenue generated from fisheries – fisheries sector is not benefiting from their own revenue generation.

Table 1. Matrix of Consolidation of views expressed by persons interviewed

	Transparency	Accountability	Effectiveness	Participation	Cohesion	Adaptability/Reactivity	Subsidiary proportionality
Policy	Good – a new constitution and strategic policy. Generally transparent	Generally poor – many changes in structures seems to confuse accountability	Policy good in principle but implementation sluggish and inhibited by political instability	Generally good – strong community base and involvement of NGOs	Poor – many different institutions. Fresh water components seems more cohesive	Policy has been revised recently - strategic plans is ambitious	Mostly unclear – MoD remains central decision making body. Districts respond to FiD in Mombasa. Mombasa marine office embraces policy
Legislation/Regulations/bylaws	Good – legislation is strong and refined from time to time. DWFN vessel licensing irregular.	Good – implementation though is weak. DWFN licensing process is not clear.	Poor – prosecutions are limited - artisanal component around the whole coast difficult to apply legislation effectively	Appears good with participation by interested and affected parties. Foreign licensing problematic.	Appears generally good. String bottom-up approach that seems to be functional. Synergy with KWS legislation on problematic.	Good – change can be made to regulations relatively easily	Responsibility mostly at the District Fisheries Officer and BMU level. Requires police intervention for arrests. Management of MPAs done under different Act and conflict with fisheries legislation. Foreign vessel licensing delegated to Nairobi (unclear).
Institutions	Good within MoD and FiD.	Mostly FiD. Accountability of parastatal (KMFRI) not clear.	Generally weak and inhibited by capacity deficiencies.	Participation by most institutions appears good but with different skills base.	Inadequate Institutions seem to work in isolation - poor communication between them (generalization – does not apply to all)	Poor – reaction to changes needed is sluggish and appears difficult to implement given the current administrative and institutional regimes	Not well defined. Currently MoD run centrally with marine matters designated to Mombasa office. FiD relies heavily on district officers to manage fisheries on the ground. Some apparent responsibility taken by BMUs through bylaws.
Fishery Management	Good transparency but slow to implement	Not clear – issues dealt with mostly by FiD. Accountability of other institutions on fisheries matters vague. KWS / MPA strong.	Generally ineffective with declining stocks. Offshore fishery management ineffective	Within MoD and FiD appears good but capacity lacking.	Poor across institutions.	Poor and requires faster responses to issues. Constrained by need to involve many different parties.	FiD and MoD carries main responsibility. District officers must implement – extremely challenging with capacity limitations.
National Capacity	Good – clearly lacking.	Poorly Understood	Poor	Available capacity active but understaffed. Infrastructure lacking	Generally adequate	Poor and constrained by finances	Not clear – requires evaluation. Pending problem with change to county system

7. REVIEW OF PROGRESS MADE IN IMPROVING GOVERNANCE FOR MARINE FISHERIES

- In general there has been on-going progress in the governance of fisheries in Kenya. There have been significant shifts in policies and governance in the recent past in fisheries management, however there are still significant gaps (this was also the conclusion of the ReCoMaP State of Sea assessment in 2009).
- However, progress is slow. The fisheries Act has been revised, the devolution to a County system of management is going to be disruptive and initially is likely to be a retrograde step – at least until the new structures become functional.
- The legal and institutional support framework is functional but inadequate to cope with the many fisheries issues as well as the growing regional interests.
- The co-management (BMU) legislation and policy is positive – effective implementation not yet clear.
- There are governance concerns regarding the implementation of fisheries management plans and the involvement of communities.
- There continues to be fisheries research conducted by KMFRI and other organisation with external funding (WWF, CORDIO, SWIOFP, KCDP, ReCoMaP and others). Although this is perceived as progress, many of these programmes, as well as the research, is often not applied. This is in many ways a governance issue where there are no definite and structured protocols of engagement between researchers and fisheries managers (ReCoMaP SOS report also refers).
- Flouting of regulations (ReCoMaP report also refers). Lack of compliance is a growing governance concern especially flouting of fisheries regulations pertaining to the use of illegal fishing gear. This problem is widespread and despite the initiation of BMUs, the problem persists.

8. DISCUSSION AND REVIEW OF MAJOR GAPS IDENTIFIED IN THE GOVERNANCE FRAMEWORK

Fisheries governance in Kenya has historically being focused on inland or the freshwater sector. Historically governance of the marine sector has and still is weak although the essential components of good governance are in place. This is expected to be undermined in the future due to the uncertainty in forthcoming elections (late 2012 likely) and the implementation of the county system.

Fisheries legislation is generally sound with the new bill aiming at strengthening Kenya's interests in the offshore sector – in particular the tuna and shrimp industrial sectors. Due to the extent of community involvement along the coast, it has historically been a difficult sector to manage. Monitoring and Control is extremely difficult and is challenged by population growth as well as vulnerability in the transboundary areas (north mostly). Due to

the high level of community involvement, interaction with the industrial sectors, such as the shrimp fishery is a major governance and fishery management challenge. Governance of Kenya's fisheries in the offshore sector is almost zero and limited to licensing fees with no culture of managing these licenses. This has effectively led to "non-performance" of Kenya in the sector – a situation that has recently come to the fore with the pending allocation of country rights for tuna within the IOTC. Underpinning the problem has been weak governance – an apparent unwillingness to manage the offshore fishery, capitalising only on the licensing fees paid by the distant water nations.

Within territorial waters a key governance structure has been the implementation of Beach Management Units – essentially a co-management approach. There is little evidence to demonstrate the effectiveness of BMUs although in principle the concept is good.

The following gaps in the governance of Kenya marine fisheries have been identified (national and regional context): (Note overlaps with ReCoMaP conclusions).

1. Inadequate financial and technical resources (Capacity) are one of the main limitations for the effective functioning of national institutional arrangements dealing with the coastal and marine environment. In particular training of Fisheries Managers is seriously lacking and impacts effective governance of the resources managed.
2. Another key constraint relates to overlapping and uncoordinated jurisdictions. Most of the institutions with a stake in coastal zone management fall under different ministerial or sectorial disciplines, such as water, agriculture, transportation, regional development, local government, energy and others. This multiplicity, in the absence of adequate coordination mechanisms, makes it difficult to give focused attention to the coastal and marine environment. The fact that there is no single ministry or agency with dedicated or core competency to deal with coastal and marine issues is clearly an important limitation.
3. Need to synergise the coastal zone and marine (fisheries) legislation as well as implementation this legislation effectively (noting that an Integrated Coastal Zone Bill is in process as well as a new fisheries bill). In addition, the country lacks sufficient technical and financial capacity to implement the relevant framework and sectorial laws. Training and recruitment of personnel, acquisition of equipment and facilities, and more budgetary and other resources are required, if the implementation of the various legislations is to be achieved.
4. Marine protected areas can have an important transboundary function with benefit to the regional governance of fisheries and stock sustainability.
5. Ineffective Participation in fisheries at an International level -there is a need to develop a comprehensive, modern legal and regulatory framework for fisheries management because the status and progress of national laws is not reflected in the international legal and institutional arrangements. Consequently, conflict in law enforcement and the duplication of tasks in fisheries management arise (refer also to ReCoMaP, 2009).

9. RECOMMENDATIONS

The strategic action plan developed by the GOK as well as the State of the Coast Report (NEMA, 2009) has succinctly identified most of the major governance issues in fisheries in Kenya. This review largely confirms the finding in these two reports. They do not however suggest mechanisms by which the issues can be addressed.

1) **Integration of the national and regional Initiatives on fisheries governance**

There are several on-going research and management initiatives relating to fisheries in Kenya – both the South West Indian Ocean Fishery Project and the Kenya Coastal Development Project (KCDP), which is currently getting underway, have major fisheries components. In both of these projects there are national and regional fisheries governance aspects.

It is therefore essential that any new activities that are developed that relate to fisheries governance either in the region or at a national (Kenya) level, are appropriately integrated into the activities of these programmes. The essential question is what activities and areas are likely to have maximum impact in addressing the Governance issues? In the authors' view, there are three broad areas that can be supported.

2) **Development of Fishery Management Capacity**

Nearly all key components of the Fishery Management Framework are lacking in Kenya. The lack of capacity will also be exacerbated by the likely changes in governance associated with the new fisheries Act in Kenya (devolution to Counties).

Capacity development, if it is to feed effectively into management in the medium to long-term, should also attempt to address the communication gap between fisheries research and fishery managers. Ideally research components, such as stock assessment should be practically linked to the development of fishery management plans and operational management procedures for the different fisheries and stocks.

The outputs of the training / capacity should therefore not be pure science but should develop fisheries management capacity. This capacity should focus on fisheries with the greatest need which in my view are:

- Offshore tuna fisheries, stock assessments and greater involvement in the regional management process;
- Understanding the artisanal fisheries impacts on stocks they exploit, in particular the seasonal migrating large pelagic species.

3) **Harmonisation and Review of Fisheries legislation**

Although the current new fisheries bill is a step up from the old Act and attempts to focus more on offshore fisheries, there are conflicts with other legislation (such as the management of MPAs and Marine Managed Areas). This should include the integration / effectiveness of the Act with respect to regional management and transboundary issues.

4) **Transboundary and EEZ management**

There is an urgent need for the coastal states (and many of the Indian Ocean Island states) to raise their profiles in the RFMOs (in particular IOTC). Further, the management framework for offshore fisheries at the National level (in Kenya and possibly other states in the region) clearly does not support the development of a national fishery. Kenya simply does not facilitate the mechanisms needed to develop a viable domestic fishery for offshore fisheries. The governance and legislative framework needed can be streamlined and costs (taxes) reduced to facilitate the economics of the tuna sector. This will also encourage DWFN to utilise land-based facilities (Mauritius and Seychelles have taken similar steps successfully).

A suggestion made by several respondents in the interviews was the development of a common fisheries policy for the WIO region – that is harmonisation of the fisheries agreements signed by states when dealing with the EU and other DWFNs. Such a strategy will ensure consistency in approach facilitating monitoring, catch reporting, Observer deployments, vessel safety, minimisation of IUU activity etc. between coastal and Island state of the IOC region.

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ANNEXES

ANNEX 1: TERMS OF REFERENCE

Background to assignment

Despite challenges, most of the countries of the ESA-IO region and their leadership have already subscribed to one or more strategic agreements, protocols, commissions or conventions that endorse much of what the IOC Regional Fisheries Strategy aims to promote. One of the primary result tasks of the Program is that these inherently positive instruments are harmonised and brought into one overall implementable process to ensure sustainable outcomes in marine fisheries management and development through a more appropriate governance framework. For the purpose of the Program, a governance framework is defined as a set of institutions, laws, regulations and mechanisms that governs the adoption and implementation of specific fisheries management and development actions. Good Governance is achieved when such a framework progressively incorporates a set of agreed upon principles (such as transparency, economic efficiency, accountability, stakeholder participation, etc.). Such a set of principles can be agreed upon and promoted at national level, or a regional level for transboundary fisheries or issues of common interest.

As an initial step under the governance component of the Program two reviews will be conducted in relation to marine fisheries.

The first will concern the assessment of national and regional governance capacity. The assessment will concern all marine fisheries including transboundary and highly migratory fisheries. Concurrently, the needs and expectations of individual countries and RFMOs will be assessed so as to develop a regional overview of gaps and expectations and subsequently relate these to the overall Programme objective of deepening collaboration for fisheries governance in the region. These assessments will provide a basis for future harmonization of approaches to governance and for the design of related training activities. A special concern will be to promote the implementation of relevant international and regional agreements, starting with the assessment of progress made in the region towards this end.

The second will concern more specifically the assessment of national and regional capacity in providing key fisheries management services as required to ensure the sustainable exploitation of transboundary fisheries resources. This assessment will serve as a basis for the identification and implementation of actions aimed at improving fisheries management services. This will be done in relation to governance principles and to selected issues of concern, such as the need to promote more cost-effective approaches to management; enhanced coherence between national and regional services; and more effective stakeholders' involvement.

The outcome of these two assessments and further consultations with stakeholders will be an action plan for improved governance and fisheries management services that will include actions to be supported by the Program as per its priorities and expected outputs.

A technical meeting on improving governance and management services for transboundary fisheries resources will be organized in collaboration with relevant RFMOs and RECs. This meeting will also aim at specifying activities to be undertaken under this component of the program.

There are currently several projects that are also addressing governance and fisheries management in the region: PROFISH (World Bank); PAF (DFID); SWIOFP (in support of SWIOFC); IOC-RECOMAP and ACPFISH II. FAO-NEPAD is also launching a new Program in support of fisheries management with financial support from SIDA.

Issues to be addressed

This intervention is required to initiate a governance process for the sustainable exploitation of marine fisheries in the ESA-IO region. A comprehensive review of Governance and Fisheries Management Services will serve a basis for:

- A better understanding of progress made and of the challenges that remains for good governance of marine fisheries in the region
- An identification of gaps and priorities in achieving better governance in general and in the provision of fisheries management services in particular
- A stakeholder dialogue on findings and priorities.
- The planning of activities to be undertaken under the Governance Component of the Program, including the enhancement of human resources in the ESA-IO region and related awareness building activities.

The countries of the ESA-IO region concerned by these assessments comprise: Comoros, Kenya, Madagascar, Mauritius, Seychelles, Somalia and Tanzania.

Activities of the Consultant

Comprehensive review and provision of recommendations on national and regional governance capacities for marine fisheries (i) in general and (ii) more specifically in relation to the provision of fisheries management services aimed at transboundary and migratory species. The review will concern Kenya. It will contain the following chapters:

Review of perception by stakeholders. How Governance is defined and perceived and how is good governance as such being promoted in the country.

Review of progress made in improving governance for marine fisheries. What are the major regulatory, institutional, and policy changes introduced at national level over the last 10 years and how these relate (intentionally or not) to the following principles of good governance: Accountability, Transparency, Efficiency, Participation, Coherence, Adaptability-Reactivity, Subsidiary-Proportionality (in relation to local-national-regional issues).

Review of major gaps identified in the Governance framework (institutional, legal, and policy gaps) in relation to promoting good governance principles: based on above review and stakeholder's perception. Identification of possible follow-up actions.

Complementary review of national capacity in providing key fisheries management services (aside from MCS) as required to ensure sustainable exploitation and benefits from fisheries resources. This will be done in relation to governance principles and to the following key issues/tools of interest:

- Defining fisheries management units;
- Clarifying obligations and rights;

- Promoting cost efficiency in management services;
- Promoting compliance;
- Promoting effective participation and co-management arrangements;
- Preparing and implementing fisheries management plans;
- Enhancing coherence between management policies and other policies (fiscal, social, etc.);
- Enhancing coherence between national and regional management services;
- Based on the above identify actions that could be undertaken to improve fisheries, management services.

Note: In the country visited by the mission a number of meetings will be organized to address governance with stakeholders.

Expected outputs

The Expert shall produce a report demonstrating the work done, namely:

- The expert shall produce one report according to the outlined proposed. The report will include specific recommendation for addressing each of the specific areas of evaluation identified above.
- The report will be prepared in English. It will be produced using MS Word (and other MS Office software if necessary) and be available in hard copy and electronic form.

ANNEX 2: INTERVIEW STRUCTURE AND QUESTIONS

The questions below varied between interviews (related to areas of interest of the person interviewed).

1. Do you think governance of fisheries is “transparent” in Kenya?
2. How is good governance being promoted in Kenya?
3. From a Governance perspective what do you think can be done to improve fisheries governance in Kenya and the REGION as a whole?
4. Are there any specific areas of concern - are there any ways in which an activity can be undertaken that may help to improve fisheries governance?
5. What have been the major regulatory changes in recent years relating to fisheries?
6. Can you suggest any major gaps in the fisheries governance framework?
7. Do you think the new Bill will be better than before - it will require extra demands on fisheries management capacity - do you agree and how do you think it can be addressed through an “action”?
8. Is national capacity to undertake fisheries management services (FMS) adequate?
9. Are fisheries management services cost effective in your opinion?
10. Any ideas on what can be done to improve FMS?
11. Have any management plans being implemented effectively?
12. Is there an effective consolidation of Kenya national and regional management activities?
13. Do the various institutions involved in FMS communicate effectively and are activities adequately coordinated?
14. Regarding Tuna - how can Kenya improve their management of the resources in their waters?
15. Does Kenya interact appropriately at the international level regarding tuna?
16. Re infrastructure - can you give me any information or ideas to improve fisheries infrastructure, streamline governance to help facilitate port handling, processing, trade, export, storage etc.
17. It has been suggested that better harmonisation between the commercial industry, artisanal / local fishers and the fisheries departments needed - do you agree and if so where are the main problem areas and how can they be addressed.

ANNEX 3: LIST OF PERSONS CONSULTED OR INTERVIEWED

Name	Position	Institution / Affiliation	Date	Location
Dominique Greboval	Technical Director	Agrotec – Smartfish programme	26/07/11 to 27/07/11	Mauritius
Chritophe Breuil	Consultant	Independent - Agrotec	27/07/11	Mauritius
Elizabeth Mueni	Fisheries Manager	Depart of Fisheries	29/07/11	Mombasa FiD
Rondolph Payet	Exec Officer	SWIOFP	30/07/11	Mombasa
Jacqueline Uku	Project Manager	KCDP and KMFRI	30/07/11	Mombasa
Simon Gitau	Asst. Director	KWS	01/08/11	Mombasa KWS
Mohamed Said	Senior Scientist – Fisheries	KWS	01/08/11	Mombasa KWS
Nicholas Ntheketha	Prov. Director	Ministry of Fisheries Development	01/08/11	Mombasa FiD
Shikami Kennedy	Fisheries Manager	Depart of Fisheries	01/08/11	Mombasa FiD
Abied Oshaan	Director	Wanainchi Marine Processors	01/08/11	Mombasa
Godfrey Monor	Director of Fisheries / Aquaculture	Ministry of Fisheries Development	02/08/11	Nairobi
Simon Wariu	Director of Fisheries	Ministry of Fisheries Development	02/08/11	Nairobi
Sam Weru	Director EA	WWF	03/08/11	Nairobi – telephonic only
Patrick Kimani	Project Manager	ReCoMaP, Kenya	03/08/11	Nairobi – telephonic only
Beth Wagude	Director	AFIPEK (Fish Importers and Exporters Assoc.)	03/08/11	Nairobi Westlands
Nancy Gitonga	AU Consultant	African Union Consultant	04/08/11	Nairobi Westlands
Andre Standing	IUU Consultant	Independent – formerly Inst. Security Studies (SA)	05/08/11	Nairobi
Dr Johnson Kazungu	Director	KMFRI	12/09/11	Mombasa – short int. only

ANNEX 3: LIST OF PERSONS CONSULTED OR INTERVIEWED *(continued)*

Name	Position	Institution / Affiliation	Date	Location
Dr Stephen Mwangi	Ass. Director : Aquaculture	KMFRI	13/09/11	Mombasa – short int. only
Dr Betty Nyonje	Aquaculture Spec.	KMFRI	13/09/11	Mombasa – short int. only
Dr Jacob Ochiewo	Ass. Dir. Fisheries Socio Economics	KMFRI	14/09/11	Mombasa – short int. only
Edward Kamakwa	Project Manager : EA	WWF	Various	Various discussions

LIST OF PUBLICATIONS

SmartFish Programme

1. *Report of the Inception / Focal Point Meeting of the SmartFish Programme – Flic en Flac, Mauritius, 15th-16th June 2011.* REPORT/RAPPORT: SF/2011/01. August/Août 2011. SmartFish Programme. Indian Ocean Commission (55 pages).
2. *Report of the First Steering Committee Meeting of the SmartFish Programme – Flic en Flac, Mauritius, 17th June 2011.* REPORT/RAPPORT: SF/2011/02. August/Août 2011. SmartFish Programme. Indian Ocean Commission (51 pages).
3. *Rapport de la réunion de présentation du programme SmartFish aux points focaux – Flic en Flac, Ile Maurice, 15-16 juin 2011.* REPORT/RAPPORT: SF/2011/03. August/Août 2011. SmartFish Programme. Indian Ocean Commission (55 pages).
4. *Eco-Certification for the Tuna Industry, Technical Assistance for Implementation of a Regional Fisheries Strategy for ESA-IO (IRFS).* REPORT/RAPPORT: SF/2011/04. May 2011. SmartFish Programme. Indian Ocean Commission (40 pages).
5. *Regional Market Assessment (Supply and Demand) June-August 2011.* REPORT/RAPPORT: SF/2012/5. March 2012. SmartFish Programme. Indian Ocean Commission (264 pages).
6. *Trade Assessment Study November 2011.* REPORT/RAPPORT: SF/2012/6. March/Mars 2012. SmartFish Programme. Indian Ocean Commission (120 pages).
7. *Gouvernance des Pêches Maritimes dans l'Ouest de l'Océan Indien.* REPORT/RAPPORT: SF/2012/7. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (101 pages).
8. *Value Chain Assessment of the Artisanal Fisheries – Mauritius, October 2011.* REPORT/RAPPORT: SF/2012/8. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (85 pages).
9. *Kenya Fisheries Governance August 2011.* REPORT/RAPPORT: SF/2012/9. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (36 pages).

La bonne gouvernance et de la gestion des pêches et de l'aquaculture permettent d'améliorer la contribution du secteur à la sécurité alimentaire, au développement social, à la croissance économique et au commerce régional ; ceci en assurant par ailleurs une protection renforcée des ressources halieutiques et de leurs écosystèmes.

La Commission de l'Océan Indien (COI) ainsi que la COMESA (Common Market for Eastern and Southern Africa), l'EAC (East African Community) et l'IGAD (Inter-Governmental Authority on Development) ont développé des stratégies à cette fin et se sont engagés à promouvoir la pêche et l'aquaculture responsable.

SmartFish supporte la mise en œuvre de ces stratégies régionales en mettant l'accent sur le renforcement des capacités et des interventions connexes visant à :

- mettre en place des mécanismes pour la gestion et le développement durable des pêches ;
- développer un cadre de gouvernance des pêches au niveau régional ;
- renforcer le suivi-contrôle-surveillance pour les pêcheries partagées ;
- développer des stratégies et supporter des initiatives propres à accroître le commerce régional du poisson ;
- contribuer à la sécurité alimentaire en particulier par la réduction des pertes après captures et la diversification de la production.

SmartFish est financé par l'Union Européenne dans le cadre du 10^{ème} Fond Européen de Développement.

SmartFish est mis en œuvre par la COI en partenariat avec la COMESA, l'EAC et l'IGAD et en collaboration avec la SADC. Une collaboration étroite a également été développée avec les organisations régionales de pêche de la région. L'assistance technique est fournie par la FAO et le consortium Agrotec SpA.

By improving the governance and management of our fisheries and aquaculture development, we can also improve food security, social benefits, regional trade and increase economic growth, while also ensuring that we protect our fisheries resources and their ecosystems.

The Indian Ocean Commission (IOC), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Inter-Governmental Authority on Development (IGAD) have developed strategies to that effect and committed to regional approaches to the promotion of responsible fisheries and aquaculture.

SmartFish is supporting the implementation of these regional fisheries strategies, through capacity building and related interventions aimed specifically at:

- implementing sustainable regional fisheries management and development;
- initiating a governance framework for sustainable regional fisheries;
- developing effective monitoring, control and surveillance for transboundary fisheries resources;
- developing regional trade strategies and implementing regional trade initiatives;
- contributing to food security through the reduction of post harvest losses and diversification.

SmartFish is financed by the European Union under the 10th European Development Fund.

SmartFish is implemented by the IOC in partnership with the COMESA, EAC, and IGAD and in collaboration with SADC. An effective collaboration with all relevant regional fisheries organisations has also been established. Technical support is provided by Food and Agriculture Organization (FAO) and the Agrotec SpA consortium.

Contact :

Indian Ocean Commission-SmartFish Programme
Q4 Sir Guy Forget Avenue - P.O. Box 7, Quatres-Bornes, Mauritius
Tel (+230) 427 6502 Fax (+230) 425 7952

